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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**[Docket No. 190325272-9537-02]**

**RIN 0648-XG925**

**Pacific Island Pelagic Fisheries; 2019 U.S. Territorial  
Longline Bigeye Tuna Catch Limits**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final specifications.

**SUMMARY:** In this final rule, NMFS specifies a 2019 limit of 2,000 metric tons (t) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI)). NMFS will allow each territory to allocate up to 1,000 t each year to U.S. longline fishing vessels in a valid specified fishing agreement. As an accountability measure, NMFS will monitor, attribute, and (if necessary) restrict catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. These catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

**DATES:** The final specifications are effective [*insert date of filing for public inspection at the Office of the FEDERAL REGISTER*], through December 31, 2019. The deadline to submit a specified fishing agreement pursuant to 50 CFR 665.819(b) (3) for review is [*insert date 30 days after the date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagic FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or [www.wpcouncil.org](http://www.wpcouncil.org).

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the action. Copies of those analyses, which include an environmental assessment (EA) and a finding of no significant impact (FONSI), are available from <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0028>, or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Walker, NMFS PIRO Sustainable Fisheries, 808-725-5184.

**SUPPLEMENTARY INFORMATION:** NMFS is specifying a catch limit of 2,000 t of longline-caught bigeye tuna for each U.S. Pacific territory in 2019. NMFS is also authorizing each territory to allocate up to 1,000 t of its 2,000 t bigeye tuna limit to U.S. longline fishing vessels permitted to fish under the Pelagic FEP. Those vessels must be identified in a specified fishing agreement with the applicable territory. NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819. When NMFS projects that a territorial catch or allocation limit will be reached, NMFS will, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (territorial catch limit), and/or vessels in a specified fishing agreement (allocation limit).

You may find additional background information on this action in the preamble to the proposed specifications published on June 6, 2019 (84 FR 26394).

#### **Comments and Responses**

On June 6, 2019, NMFS published the proposed specifications and request for public comments (84 FR 26394); the comment period closed on June 21, 2019. NMFS received seven comments from three commenters, and discusses and responds to these comments below. No changes have been made from the proposed specifications in response to the comments. We note that one technical correction has been made in the final EA, as described below in the response to Comment 7.

In addition, in light of the decision in *Territory of American Samoa v. NMFS, et al.* (16-cv-95, D. Haw), NMFS specifically invited public comments on the effect of the proposed action on cultural fishing in American Samoa. NMFS received no comments addressing cultural fishing.

*Comment 1:* NMFS should consider lowering the annual totals, and consider heavier regulation against longline fishing practices in the Pacific.

*Response:* In developing the territorial bigeye tuna catch allocation limits, NMFS and the Council considered a range of catch and allocation limits, taking into consideration sustainability of the stock, decisions of regional fishery management organizations, and the needs of Pacific Island fishing communities. The 2019 allocation limits allow for the sustainability of the bigeye tuna

stock and are consistent with the Pelagic FEP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable laws.

*Comment 2:* NMFS should act thoughtfully and quickly in completing this rulemaking process. In past years, the deep-set fishery in the Western and Central Pacific Ocean (WCPO) and the Eastern Pacific Ocean (EPO) attained the U.S. bigeye tuna catch limits in each area. As a result, many U.S. deep-set vessels were unable to fish because they were not able to allocate catch pursuant to already-executed specified fishing agreements. Such delays in rulemaking impede the achievement of the goals of the Pelagic FEP. The publication of the proposed rule earlier in the calendar year in 2019 should ensure no closure period of fishing operations in the WCPO.

*Response:* NMFS reviews the proposed catch and allocation limits for consistency with the provisions of the Magnuson-Stevens Act, the Pelagic FEP, decisions of the WCPFC, and other applicable laws. This review requires preparation of comprehensive supporting environmental analyses to ensure the conservation of affected fish stocks and protected species. While NMFS is committed to preparing analyses before the fishery could reach the WCPO bigeye tuna limit, NMFS also encourages the domestic fishing

industry to consider industry-led actions in both the WCPO and the EPO that might reduce the likelihood of reaching a catch limit, or that would otherwise alleviate the impact of a closure.

*Comment 3:* The proposed rule will provide substantial benefits for the U.S. territories, the Hawaii-based longline fisheries, the Hawaii seafood market, and protected species.

*Response:* NMFS agrees that this action, which is identical to the catch and allocation limits implemented in 2014 (79 FR 64097, October 28, 2014), 2015 (80 FR 61767, October 14, 2015; 80 FR 68778, November 6, 2015), 2016 (81 FR 63145, September 14, 2016), 2017 (82 FR 47642, October 13, 2017), and 2018 (83 FR 53399, October 23, 2018), addresses the conservation and management needs of bigeye tuna in the WCPO, and considers the needs of fishing communities of the U.S. Pacific Islands, and the impacts to protected species.

*Comment 4:* Transferred effects caused by closing Hawaii-based longline fisheries have detrimental impacts on local Hawaii seafood markets and on protected species that are caught more frequently by foreign fisheries.

*Response:* NMFS considered the concept of transferred effects during a closure of the U.S. longline fleet in the development of these specifications and the EA.

*Comment 5:* The specifications will not affect WCPO bigeye tuna stock status.

*Response:* NMFS is satisfied that this action is consistent with the conservation and management needs of bigeye tuna in the WCPO. The catch and allocation limits would not result in a change in stock status of WCPO bigeye tuna.

*Comment 6:* The proposed limits are substantially more stringent than conservation measures adopted by WCPFC, which do not establish any bigeye limits for the territories. The commenter questioned whether there is a necessity to limit each territory to a 1,000 t allocation.

*Response:* This action implements the recommendation from the Council's 176th meeting, in March 2019. The Council recommended that NMFS specify a 2,000 t longline bigeye catch limit for each U.S. participating territory, and that NMFS specify that each territory can allocate up to 1,000 t of their bigeye catch limit. Utilizing the best scientific information available, NMFS has determined that these catch and allocation limits are consistent with WCPFC objectives. NMFS acknowledges that the WCPFC has not

adopted bigeye limits for the U.S. territories. NMFS notes that the Council has recommended amending the Pelagic FEP and Federal regulations to remove the requirement that NMFS must first specify catch limits for the territories before specifying allocation limits, but a plan amendment and proposed regulations to implement this Council recommendation have yet to be developed.

*Comment 7:* The commenter is supportive of the conclusion that the effect of the action on Endangered Species Act (ESA)-listed marine mammal species is insubstantial. The EA should include the information that there has never been an observed interaction in the very small area of overlap between the area in which Hawaii longline fishing effort occurs and the designated range of the main Hawaiian islands (MHI) insular stock of false killer whales, as Table 32 in the EA incorrectly implies that there have been continued observed interactions with MHI insular false killer whales.

*Response:* NMFS acknowledges that observers have not documented interactions in the area of overlap between the area in which fishing effort occurs and the designated range of the MHI insular stock of false killer whales. Therefore, NMFS has made a technical correction to Table 32 in section 3.3.2.1 of the final EA.



## **Classification**

The Regional Administrator, NMFS Pacific Islands Region, determined that this action is necessary for the conservation and management of Pacific Island fishery resources, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is exempt from review under Executive Order 12866.

Because this rule relieves a restriction, the exception in 5 U.S.C. 553(d)(1) applies so that it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act. This rule allows U.S. vessels identified in a valid specified fishing agreement to resume fishing in the WCPO even if NMFS closes the longline fishery for bigeye tuna. Consistent with Conservation and Management Measure 2018-01 adopted by the WCPFC at its December 2018 meeting, the bigeye tuna catch limit applicable to U.S. longline fisheries in the WCPO in 2019-2020 is 3,554 t. When NMFS projects that the limit will be reached, NMFS must close the fishery for bigeye tuna in the WCPO. Regulations at 50 CFR 665.819 require NMFS to begin attributing longline caught bigeye tuna to the U.S. territory to which a fishing agreement applies either seven days before the date NMFS projects that the

fishery will reach the WCPO U.S bigeye tuna limit, or upon the effective date of the agreement, whichever is later. Based on longline catch records to date, NMFS projects the current 3,554 t limit of WCPO bigeye tuna will be reached on August 29, 2019. This projected date is subject to change, and the projected date throughout 2019 has continued to fall earlier in the year as the fishing year has progressed. If the effectiveness of this final rule is delayed past the date that the WCPO bigeye tuna limit is reached, NMFS would be required to publish a temporary rule that restricts the retention of WCPO bigeye tuna in the Hawaii-based longline fishery until this final rule is effective. After the effective date, NMFS would remove the restrictions for U.S. vessels identified in a valid specified fishing agreement with a U.S. territory. Implementing this rule immediately allows the fishery to continue fishing without the uncertainty or disruption of a potential closure.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule, and we do not

repeat it here. NMFS received no comments on this certification; as a result, a final regulatory flexibility analysis is not required, and none has been prepared.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory

Programs, National Marine Fisheries Service.

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